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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,157	03/28/2001	Tatsuya Yamamoto	010425	5168

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,157

Applicant(s)

YAMAMOTO ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,9,14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,9,14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claims 1,9,14 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite. On line 4, it is not clear if the primary sauce is applied after the water-migration layer is applied or the primary sauce is mixed in with the layer. Line 5, the reference to "a sauce layer" is confusing because it is not known if this is a different sauce layer or the primary sauce referred on line 4. On line 6, it is not clear how the secondary sauce is structurally related to the primary sauce and the layer; it is not clear how the secondary sauce is positioned on the product. Also, the claim is confusing in that the preamble recites two layers; however, the body of the claim recites more than two layers. There are the water migration-preventing layer, possibly a primary sauce layer, a sauce layer and a secondary sauce. The structure of the product claimed is unclear.

Claim 9 is vague and indefinite. On lines 6-7, it is unclear if the water-migration layer is separate layer or the layer is mixed in with the primary sauce; it is also unclear if the layer is applied before the primary sauce or after the primary sauce. What does applicant mean by "frozen with the primary sauce"? Line 10 is confusing. The claim recites that the secondary sauce has a sugar content that is lower than that of the primary sauce; however, the ranges of sugar content of the primary sauce and secondary sauce overlap. It is not clear what is intended.

Claims 1,9,14,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scherpf et al in view of Monte

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Scherpf et al disclose a process for making free-flowing, coated, frozen food. The process can be used to coat pieces of food as small as rice, as well as pieces of pasta. The process is especially useful in preparing pasta coated with a thick sauce such as a tomato, Alfredo or cheese sauce. The pasta can be either fresh, extruded or dry, cooked pasta. An intermediate coating of a solid or liquid food-acceptable fatty material is applied to the cooked pasta before the pasta is frozen. The fatty material can be soybean oil, corn oil, olive oil, cotton seed oil, butter, cream or margarine. The amount of fatty material coated on the cooked pasta is typically from about .1-5%. The cooked pasta is then individually quick frozen(IQF). The IQF pasta is then loaded into the coating vessel to be coated with a liquid coating material. Sufficient cryogen is introduced into the coating vessel to cool the free-flowing pieces. The coating process can be repeated. The coatings preferably weigh in the range of from about 5-75% weight %. The coated, frozen pasta can be subsequently packaged. (see columns 4-6)

The teaching of Scherpf et al is described above. Scherpf et al do not disclose a starch or a mixture of starch and oil as the water-migration layer, the sugar content and boiling the rice after coating with oil or fat or starch.

Monte discloses an ice cream sandwich. Monte teaches to apply both oil and starch as a membrane separating the ice cream from the cookies. The membrane serves as a barrier to prevent moisture migration from the ice cream into the cookies. Monte teaches the use of oil or starch alone is not as effective as the combination of oil and starch.

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The fatty layer in Scherpf et al serves as a barrier between the pasta and the sauce layer. It would have been obvious to one skilled in the art to use a combination of oil and starch as taught in the Monte reference to obtain a better barrier layer to more effectively prevent the migration of moisture from the sauce into the pasta. While the claims are confusing in that it is not clear if the water-migration layer is mixed in with the sauce or as separate layers. The claims are interpreted in light of the specification which discloses separates layers. Scherpf et al disclose the sauce layer can have varying thickness. Since the sugar content of the primary sauce and secondary sauce overlap, the two layers can be the same and thus, there is no difference between the primary sauce and secondary sauce. The layer with varying thickness is formed of many layers; thus, Scherpf et al teach the limitation of primary sauce and secondary sauce. As to the sugar content, this would have been obvious to have any varying sugar content depending on the taste and flavor desired. It would also have been obvious to boil the rice if a cooked product is desired. The time at which the starch and oil is added can readily be determined by one skilled in the art through routine experimentation to obtain the most optimum coating. The amount of starch can be determined to obtain the most optimum coating. Since the starch will have the same function as the oil, it would have been obvious to use the amount of oil as the guideline.

Applicant's arguments with respect to claims 1,9,14 and 16 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868.

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The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

September 8, 2003


LIEN TRAN
PRIMARY EXAMINER
Group 1700